



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

December 3, 2002

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P. O. Box 4087  
Austin, Texas 78773-0001

OR2002-6873

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172976.

The Texas Department of Public Safety (the "department") received two requests for copies of information pertaining to a specified traffic accident. You state that you will make some responsive information available to one of the requestors. You claim, however, that the remaining requested information is excepted from disclosure with respect to both requestors pursuant to section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, we must address the procedural requirements of section 552.301 of the Government Code. We note that section 552.301 provides that a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See* Gov't Code § 552.301(b). In addition, section 552.301 provides that a governmental body that requests an attorney general decision must, within a reasonable time but not later than the fifteenth business day after the date of receiving the written request for information, submit to the attorney general: (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld; (2) a copy of the written request for information; (3) a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date; and (4) a copy of the specific information requested or representative samples of the information, if a voluminous amount of information was requested, labeled to indicate which exceptions apply to which parts of the information. *See* Gov't Code § 552.301(e). You state that the department received the first request on August 19, 2002. Therefore, the department had until September 3, 2002 to ask the attorney general for a decision as to whether the information that is responsive to the first request could be withheld from disclosure. However, we note that this office did not receive the department's request for a decision

concerning the first request until September 26, 2002. We also did not receive any of the information required to be submitted to our office under section 552.301(e) until September 26, 2002. Accordingly, we conclude that the department failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from our office regarding the first request for information.

When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). In such an instance, the governmental body must demonstrate a compelling interest in order to overcome the presumption and withhold the information at issue from disclosure. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the information confidential or when third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Since the department claims that the Gregg County District Attorney (the "district attorney") has a prosecutorial interest in the release of the submitted information under section 552.108 of the Government Code, we will address that claim with respect to the submitted information. *See* Open Records Decision No. 586 (1991) (stating that need of governmental body, other than one that received written request, may constitute compelling reason to overcome presumption that information is public).

Next, we note that portions of the submitted information are subject to chapter 550 of the Transportation Code. Section 550.065(b) provides that, except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Transp. Code § 550.065(c)(4). Under this provision, the department or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *See id.* In this case, we find that both requestors have provided the department with at least two of the three pieces of information required under section 550.065(c)(4). Accordingly, we conclude that the department must release the accident reports that we have marked to both requestors pursuant to section 550.065(c)(4) of the Transportation Code.

Finally, we address your claim regarding section 552.108 of the Government Code. Section 552.108 provides in pertinent part that "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). We note that a governmental body that claims section 552.108 as an exception to disclosure with respect to requested information must reasonably explain, if the information does not supply an explanation on its face, how and why section 552.108 is applicable to the information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You state, and provide documentation showing, that the district attorney seeks to have the requested information withheld from disclosure under section 552.108 because it relates to criminal charges that are pending with the district attorney. Based on our review of this representation and the information at issue, we agree that the release of most portions of this information "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a).

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public). Accordingly, with the exception of basic information that must be released to the requestors, we conclude that the department may withhold the remaining submitted information pursuant to section 552.108(a)(1) of the Government Code.

In summary, the department must release the accident reports that we have marked to both requestors pursuant to section 550.065(c)(4) of the Transportation Code. With the exception of basic information that must be released to the requestors, the department may withhold the remaining submitted information pursuant to section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

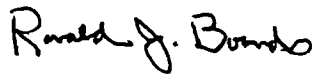
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

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If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 172976

Enc. Submitted documents

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